

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RODNEY COLLINS	:	CIVIL ACTION
	:	
vs.	:	
	:	
RONALD McCOY	:	NO. 05-6305

MEMORANDUM

ROBERT F. KELLY, Sr. J.

AUGUST 9, 2006

The factual background of this case is set forth in our Memorandum of this date dismissing Plaintiff's Complaint and will not be repeated here. On June 7, 2006, Defendant Ronald McCoy filed a Motion for Judgment on the Pleadings as to Plaintiff's original Complaint, Doc. No. 16. On June 28, 2006, this Court granted Plaintiff's Motion to extend the time for him to respond to Defendant's Motion to Dismiss. (Doc. No. 22) He did not respond, but on July 12, 2006 Plaintiff filed a Motion to Amend the Complaint (Doc. No. 24) which is presently before this Court for decision.

The Supreme Court held in Foman v. Davis, 371 U.S. 178 (1962) that leave to amend is properly denied where there has been "undue delay, bad faith or dilatory motive on the part of the movant . . . undue prejudice to the opposing party by virtue of allowance of the amendment [or] futility of amendment." Id. at 182; see also Jablonsky v. Pan Am. Airways, Inc., 863 F.2d 289, 292 (3d Cir. 1988); Massarsky v. GM Corp., 706 F.2d 111, 125 (3d Cir.), cert. denied, 464 U.S. 937 (1983).

Plaintiff's proposed Amended Complaint is substantially the same as the original Complaint. The Amended Complaint is futile because it will not withstand a motion to dismiss

for the same reasons that we have already set forth in our Memorandum dealing with Defendant's Motion to Dismiss the original Complaint. Therefore for the reasons set forth in that Memorandum we find that the Amended Complaint would be futile and the Motion to Amend is therefore denied.

We therefore enter the following Order.

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ORDER

AND NOW, this 9th day of August, 2006, it is hereby **ORDERED** that
Plaintiff's Motion to Amend Complaint (Doc. No. 24) is **DENIED**.

BY THE COURT:

/s/ Robert F. Kelly
ROBERT F. KELLY
SENIOR JUDGE